

REMARKS

This Response is submitted in reply to the non-final Office Action mailed on November 14, 2005. Claims 1-24 are pending in this application. In the Office Action, Claims 1-24 are rejected under 35 U.S.C. §103. For the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn.

In the Office Action, Claims 1-2, 4, 6 and 8-9 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,189,944 to Piche ("Piche"). Applicants respectfully disagree with and traverse this rejection for at least the reasons set forth below.

Independent Claim 1 recites, in part, a kiosk comprising at least one product additive storage area having at least one shelf. In contrast, Applicants respectfully submit that *Piche* fails to disclose every element of Claim 1.

Applicants respectfully disagree with the Patent Office's assertion regarding that it would have been obvious to the skilled artisan to modify *Piche* to arrive at Applicants' claimed invention. Indeed, the Federal Circuit has held that "obvious to try" is not the proper standard under 35 U.S.C. §103. *Ex parte Goldgaber*, 41 U.S.P.Q.2d 1172, 1177 (Fed. Cir. 1996). Further, it is improper to use an invention as a template for its own reconstruction based on hindsight knowledge of the patented invention when the prior art does not contain or suggest that knowledge. *Sensonics, Inc. v. Aerasonic Corp.*, 38 U.S.P.Q.2d 1551, 1554 (Fed. Cir. 1996).

Piche fails to disclose or suggest a number of elements of Claim 1. For example, *Piche* fails to disclose at least one product additive storage area as required by Claim 1. The Patent Office admits same. See, Office Action, page 3. Although the Patent Office alleges that element 10 of *Piche* is equivalent to the product additive storage area, element 10 refers to an engine compartment that is specifically designed and used only for water storage. See, *Piche*, column 3, lines 38-44. This actually teaches away from Claim 1. *Piche* provides no teaching or suggestion to one of ordinary skill in the art that the engine compartment can be or is used to store anything else besides water.

In addition, *Piche* fails to disclose or suggest the product storage area having at least one shelf as required, in part, by Claim 1. In fact, a shelf is not even mentioned or suggested anywhere in *Piche*, especially as part of a product additive storage area. Moreover, the engine compartment 10 in *Piche* clearly has no shelves associated with it. Instead, the Patent Office

merely states it would have been obvious modify *Piche* to include shelves without providing any reasonable support for its assertion. However, one having ordinary skill in the art would not be motivated to add shelves to the engine compartment because it is specifically designed to fit and store a fresh water tank 14, a hot water heater 16, a gray water storage tank 18, a thermostatically controlled electric space heater 19 and an electric pump 20. See, *Piche*, Figures 1 and 4. Because space is very limited in the engine compartment, one having ordinary skill in the art would actually be led away from putting shelves in the engine compartment or using it to store product additives.

Piche also fails to disclose a biological sampling analysis and handling area. Instead, the hand sink 22 disclosed in *Piche* is said to be equivalent to the biological sample analysis and handling area. However, *Piche* fails to disclose or suggest the sink as having a biological sampling analysis capability or even teach or suggest it being used in such a manner. For the reasons discussed above, Applicants respectfully submit that Claim 1 and Claims 2, 4, 6 and 8-9 that depend from Claim 1 are novel, non-obvious and distinguishable from the cited reference.

Accordingly, Applicants respectfully request that the rejection of Claims 1-2, 4, 6 and 8-9 under 35 U.S.C. §103 to *Piche* be withdrawn.

In the Office Action, Claims 12-19 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 6,358,546 to Bebiak et al. (“*Bebiak*”) in view of U.S. Patent No. 6,291,533 to Fleischner (“*Fleischner*”). Applicants believe the rejection is improper and traverse it for at least the reasons set forth below.

Independent Claim 12 recites, in part, a method for marketing a customized food product for a pet using a kiosk. For example, the method comprises, in part, providing the kiosk including at least one of a consumer interaction station, an analysis station and a workstation. In contrast, Applicants respectfully submit that there is no suggestion or motivation to combine the cited references to obtain the present claims, and even if combinable, all of the claimed elements are not taught or suggested by the cited references.

Applicants respectfully submit that there is no suggestion or motivation to combine the cited references to obtain the present claims. *Bebiak* is directed to methods for customizing pet foods to be used by pets or animals. See, *Bebiak*, Abstract. *Fleischner* is in a completely different field of invention and is directed to dietary supplements for a specific blood type in

humans. See, *Fleischner*, Abstract. In fact, *Fleischner* fails to disclose or suggest anywhere that his invention could be applied to animals and provides no guidance for doing so. Moreover, the Patent Office fails to provide specific evidence within *Fleischner* to the contrary. As a result, one having ordinary skill in the art would not be motivated to combine *Bebiak* and *Fleischner* to arrive at Claim 12.

Applicants also respectfully submit that, even if combinable, the cited references do not disclose or suggest all of the elements of Claim 12. For instance, *Bebiak* fails to disclose or suggest anywhere in the specification providing a kiosk including at least one of a consumer interaction station, an analysis station and a workstation as required by Claim 12. In fact, the Patent Office provides no specific evidence of using a kiosk in *Bebiak*. Similarly, *Fleischner* fails to disclose or suggest providing a kiosk including at least one of a consumer interaction station, an analysis station and a workstation. In sum, *Bebiak* and *Fleischner* fail to disclose or suggest the use of a kiosk anywhere in the specification.

For the reasons discussed above, the combination of *Bebiak* and *Fleischner* is improper. Moreover, even if combinable, *Bebiak* and *Fleischner* do not teach, suggest, or even disclose all of the elements of the present claims, and thus, fail to render Claim 12 and Claims 13-19 that depend from Claim 12 obvious for at least these reasons.

Accordingly, Applicants respectfully request that the obviousness rejection under *Bebiak* and *Fleischner* with respect to Claims 12-19 be reconsidered and the rejection be withdrawn.

In the Office Action, Claim 3 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Piche* in view of U.S. Patent No. 6,098,346 to Miller et al. (“*Miller*”). Claim 5 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Piche* in view of U.S. Patent No. 6,754,919 to Leaphart et al. (“*Leaphart*”). Claims 7 and 10-11 are rejected under 35 U.S.C. §103(a) as being unpatentable over *Piche* in view of U.S. Patent No. 4,179,723 to Spencer (“*Spencer*”). Applicants respectfully submit that the patentability of Claim 1 renders moot the obviousness rejection of Claims 3, 5, 7 and 10-11 that depend from Claim 1. In this regard, the cited references fail to teach or suggest the elements of Claims 3, 5, 7 and 10-11 in combination with the novel elements of Claim 1.

Claim 20 was rejected for similar reasons set forth in Claims 1, 12 15, 17 and 18. Claim 23 is rejected under 35 U.S.C. §103(a) as being unpatentable over *Bebiak* and *Fleischner* in view of

in view of U.S. Patent No. 6,427,879 to Caldwell ("Caldwell"). Applicants believe this rejection is improper and traverse for at least the reasons set forth above. Accordingly, Applicants respectfully request that the obviousness rejection with respect to Claim 20 be reconsidered and the rejection be withdrawn. The patentability of Claim 20 renders moot the obviousness rejections of dependent Claims 21-24.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

BELL, BOYD & LLOYD LLC

BY _____

Robert M. Barrett
Reg. No. 30,142
Customer No. 29157

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